

December 6, 2018

Via email to: R5FOIA@epa.gov

US EPA Region 5—FOIA Office
Ralph Metcalfe Federal Building
77 West Jackson Blvd.
Chicago, IL 60604-3590

RE: FOIA Request for Soil Sampling Data for Properties Near S.H. Bell

Dear FOIA officer:

This is a request for records pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and applicable Environmental Protection Agency (USEPA) Regulations, 40 C.F.R. § 2.100, et seq., from the Environmental Advocacy Clinic at Northwestern University Pritzker School of Law (“EAC”).

The requested records pertain to USEPA’s investigation commencing in 2018 of soil contamination at residential areas located in close proximity to the site of the S.H. Bell facility, 10218 South Avenue O, Chicago IL 60617, as depicted in the attachment and described by USEPA as encompassing the area between the Calumet River to the West, South Ewing Avenue to the East, 100th Street to the North, and 104th Street to the South (“S.H. Bell soil sampling area”).¹

I. Requested Records and Disclosure Method

Please produce all of USEPA’s 2018 soil sampling data for all metals and other contaminants within the S.H. Bell soil sampling area, an area between the Calumet River to the West, 100th Street to the North, and 104th Street to the South (“S.H. Bell soil sampling area”).²

II. Request for a Fee Waiver (or Reduction)

EAC requests that EPA waive any fee it would otherwise charge for searching for and producing the requested records; FOIA dictates that the requested records be provided without charge “if

¹ S.H. Bell site, Chicago, Ill., USEPA Region 5. See description and map at <https://semspub.epa.gov/work/05/941282.pdf>; <https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=89ee4acf89c34ed28d6b439b63a96adb>. The soil sampling near S.H. Bell undertaken by USEPA in 2018 is described on the agency’s website entitled EPA in Illinois, S.H. Bell Chicago Facility, available at <https://www.epa.gov/il/S.H.-bell-chicago-facility>.

² Id.

disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(l)(1). The Environmental Advocacy Clinic meets the requirements for a fee waiver. *See* 40 C.F.R. § 2.107(l)(2).

A. Subject of the request

The records requested here pertain to EPA’s investigation of contamination of soil at residential properties located in close proximity to S.H. Bell, a facility that has been handling manganese and other materials and causing fugitive dust emissions to leave its facility.

A full fee waiver is requested under 5 U.S.C. § 552(a)(4)(A)(iii) (granting a fee waiver where “disclosure of the information is in the public interest because [the information] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester”).

The requested records concern “the operations or activities of the government.” 40 C.F.R. 2.107(l)(2)(i). USEPA has the responsibility to take action in conjunction with its counterpart state agencies under a broad range of statutes, including, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC §§ 9601, et seq. The requested records provide information related to the activities of USEPA in its efforts to study the soil contamination on the Southeast Side of Chicago.

B. Informative value of the records to be disclosed

The requested records are “likely to contribute to” the public’s understanding of government operations and activities.” 40 C.F.R. § 2.107(l)(2)(ii). The public does not currently possess comprehensive information regarding the government’s role in addressing public health, environmental, or other concerns related to the soil contamination in the community located in close proximity to the S.H. Bell bulk material handling facility. There is more than a reasonable likelihood that these records have informative value to the public because residents of the community in which the facility is located have long been concerned about the potential health impacts of the activities at this facility, and the public at large has an interest in understanding the impacts of this and similar operations on air, soil, and water quality. *See Citizens for Responsibility & Ethics in Washington v. U.S. Dep’t of Health & Human Servs.*, 481 F. Supp. 2d 99, 109 (D.D.C. 2006).

Residents who live, work and play near contaminated and potentially contaminated areas will benefit from an understanding of the actions taken by USEPA to alleviate present and potential risks to their community. The Environmental Advocacy Clinic represents a community group, the Southeast Side Coalition to Ban Petcoke, a group of affected residents who live in the area of Chicago, Illinois impacted by the activities described above. The Environmental Advocacy Clinic, the Southeast Side Coalition to Ban Petcoke, and other partners are regularly in conversation with the broader community; they will help disseminate the public through meetings, social media, and fact sheets, and use these materials to increase public understanding of the activities described above.

The Environmental Advocacy Clinic at the Northwestern University Pritzker School of Law is a public interest organization, which advocates on behalf of the public on environmental matters. The Northwestern University Pritzker School of Law is not-for-profit, educational organization in good standing with the Secretary of State of Illinois. The records are not requested in furtherance of any commercial interest. 40 C.F.R. 2.107(I)(3)(i).

If a fee waiver is not granted, please contact me at 312-503-4253 or Debbie.m.chizewer@law.northwestern.edu with an estimate of expenses and hold for approval before proceeding. If the fees are less than \$100, it is possible that to expedite disclosure, the Environmental Advocacy Clinic will, if needed and under protest, pay fees in accordance with EPA's FOIA regulations at 40 CFR §2.107(c)(1)(iii). If access to the requested records is denied, please provide a detailed explanation of the reason for denial.

C. Significance of the contribution to public understanding

The records requested here shed light on a matter of considerable public interest and concern: Operations at bulk material handling and other similar facilities emit particulate matter consisting of harmful metals – including manganese, a potent neurotoxin, and other toxics– and communities in Chicago and similar communities across the country are concerned about the type and extent of exposure that they endure as a result of these operations. In addition to the impact on air quality directly, we are concerned about soil contamination in the area resulting from deposition of metals from these operations.

Disclosure would help the public to more effectively evaluate the potential harm of the facility's operations and others like it on the communities in which they are located, and to better understand and evaluate EPA's actions in ensuring that such facilities comply with state and federal air pollution requirements.

Thank you for your assistance. Please call or email me with any questions.

Sincerely,



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